A

Mohd Bakri bin Ishak v Universiti Utara Malaysia

B

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NO K-01–441–10 OF 2012
ABDUL WAHAB PATAIL, MOHD ZAWAWI SALLEH AND UMI KALTHUM JJCA
11 MARCH 2015

C

Contract — Agreement — Studying loan agreement — Claim for liquidated damages — Appellant required to serve respondent after completing studies — Appellant applied to university for position of associate professor — Whether there was release condition by respondent

D

The defendant ('the appellant') appealed against the decision of the High Court in favour of a claim by the plaintiff ('the respondent') for liquidated damages in the sum of RM247,071.47 for breach of the scholarship agreement entered into between the respondent and the appellant on 17 September 1997 ('the first agreement') and 14 July 2000 ('the second agreement'). The appellant E was required, after completing the master's degree sponsored under the first agreement, to serve the respondent a period of three years. Having completed his master's degree, the appellant returned and served with the respondent. While serving the respondent, the appellant applied for and obtained an offer from the respondent to sponsor the appellant to pursue a PhD degree at F Universiti Putra Malaysia ('UPM'). Accepting the offer, the appellant entered into the second agreement, under which the appellant was required, upon completion, to serve the respondent for six years. Accordingly upon completion of his PhD degree, the appellant returned and served with the respondent. But two years 17 days after completion of his PhD degree and G reporting to the respondent, the appellant applied to UPM for the position of associate professor. The appellant received a letter of offer from UPM dated 24 May 2005 from UPM for appointment as a lecturer. By a letter dated 4 June 2005, the appellant applied to the respondent for a release from the respondent and for his service to be transferred to UPM. The respondent by a letter dated H 26 July 2005 granted the appellant a release with conditions attached. But by a letter two days later, dated 28 July 2005, the respondent appeared to grant the appellant an unconditional release.

Held, allowing appeal with costs: I

(1) While the letter of 26 July 2005 conveyed the consent or approval of the vice-chancellor, with conditions, the letter of 28 July 2005, conveyed the decision of the university, without conditions. The appellant's obligations under the first and the second agreements were to the university. The letter of 28 July 2005, conveying the decision of the university, therefore overrode the vice-chancellor's consent or approval (see paras 11 & 12).

(2) The letter of 26 July 2005 imposed the condition that the payment be made in one lump sum ('sekaligus'). If unable to comply, the appellant had the option of not accepting the appointment at UPM. The letter of 28 July 2005 imposed no such impediment and allowed the appellant to proceed to accept his appointment. In the event, estoppel would apply to estop the respondent from relying on the letter of 26 July 2005 and the first and the second agreements (see para 13).

[Bahasa Malaysia summary

Defendan ('perayu') merayu terhadap keputusan Mahkamah Tinggi yang memihak tuntutan oleh plaintif ('responden') untuk ganti rugi jumlah tertentu dalam jumlah RM247,071.47 bagi perlanggaran perjanjian biasiswa yang dimasuki di antara responden dan perayu pada 17 September 1997 ('perjanjian pertama') dan 14 Julai 2000 ('perjanjian kedua'). Perayu dikehendaki, selepas tamat ijazah sarjana yang ditaja di bawah perjanjian pertama, untuk berkhidmat dengan responden untuk tempoh selama tiga tahun. Setelah tamat ijazah sarjananya, perayu pulang dan berkhidmat dengan responden. Semasa berkhidmat dengan responden, perayu memohon dan mendapat tawaran daripada responden untuk menaja perayu mendapatkan ijazah PhD di Universiti Putra Malaysia ('UPM'). Menerima tawaran, perayu memasuki perjanjian kedua, di mana perayu dikehendaki, selepas tamat, untuk berkhidmat dengan responden bagi tempoh enam tahun. Oleh itu selepas tamat ijazah PhDnya, perayu pulang dan berkhidmat dengan responden. Tetapi selepas dua tahun 17 hari selepas tamat ijazah PhDnya dan berkhidmat dengan responden, perayu memohon kepada UPM bagi jawatan profesor madya. Perayu menerima surat tawaran daripada UPM bertarikh 24 Mei 2005 daripada UPM untuk perlantikan sebagai pensyarah. Melalui surat 4 Jun 2005, perayu memohon kepada responden untuk perlepasan daripada responden dan untuk perkhidmatannya dipindahkan ke UPM. Responden melalui surat bertarikh 26 Julai 2005 memberikan perlepasan kepada perayu dengan syarat yang dikenakan. Tetapi melalui surat dua hari kemudian, bertarikh 28 Julai 2005, responden seperti memberikan perlepasan tanpa syarat kepada perayu.

Diputuskan, membenarkan rayuan dengan kos:

(1) Sementara surat bertarikh 26 Julai 2005 memberikan izin atau kelulusan naib canselor, dengan syarat, surat bertarikh 28 Julai 2005, memberikan keputusan universiti, tanpa syarat. Tanggungjawab perayu di bawah perjanjian-perjanjian pertama dan kedua adalah kepada universiti. Surat bertarikh 28 Julai 2005, memberikan keputusan universiti, dengan itu menolak izin atau kelulusan naib canselor (lihat perenggan 11 & 12).

(2) Surat bertarikh 26 Julai 2005 mengenakan syarat bahawa bayaran dibuat sekaligus. Jika tidak dapat mematuhi, perayu mempunyai pilihan untuk tidak menerima perlantikan di UPM. Surat bertarikh 28 Julai 2005 tidak mengenakan halangan sedemikian dan membenarkan perayu untuk meneruskan menerima perlantikannya. Walau bagaimanapun, estopel akan beraplikasi untuk mengestop responden daripada bergantung ke atas surat bertarikh 26 Julai 2005 dan perjanjian pertama dan kedua (lihat perenggan 13).]

Notes

For cases on agreement in general, see 3(2) *Mallal's Digest* (4th Ed, 2013 Reissue) paras 2944–3004.

Appeal from: Civil Suit No 22–182 of 2010 (High Court, Alor Setar)

Athithen Singaravelu (Athi Seelan Mahathir & Partners) for the appellant.
Chan Kean Li (Ong See Khoon, Ong Bee Khoon and Ernie Suffian Salim with him) (Hoe & Ahmad Zaki) for the respondent.

Abdul Wahab Patail JCA:

[1] The defendant, Mohd Bakri bin Ishak ('the appellant') appealed to this court against the decision of the High Court in favour of a claim by the plaintiff, Universiti Utara Malaysia ('the respondent') for liquidated damages in the sum of RM247,071.47 for breach of the scholarship agreement entered into between the respondent and the appellant on 17 September 1997 ('the first agreement') and 14 July 2000 ('the second agreement').

[2] The appellant was required, after completing the master's degree sponsored under the first agreement, to serve the respondent a period of three years. Having completed his master's degree, the appellant returned and served with the respondent.

[3] While serving the respondent, the appellant applied for and obtained an offer from the respondent to sponsor the appellant to pursue a PhD degree at Universiti Putra Malaysia (UPM).

Accepting the offer, the appellant entered into the second agreement, under which the appellant was required, upon completion, to serve the respondent for six years. Accordingly upon completion of his PhD degree, the appellant returned and served with the respondent.

[4] But two years 17 days after completion of his PhD degree and reporting to the respondent, the appellant applied by letter dated 29 August 2004 to UPM for the position of associate professor. The appellant received a letter of offer from UPM dated 24 May 2005 from UPM for appointment as a lecturer. By a letter dated 4 June 2005, the appellant applied to the respondent for a release from the respondent and for his service to be transferred to UPM.

[5] By a letter dated 26 July 2005, the respondent granted the appellant a release with conditions attached. By a letter two days later, dated 28 July 2005, the respondent appeared to grant the appellant an unconditional release.

[6] There was no dispute that the letter dated 26 July 2005 ('exh P7') imposed conditions, inter alia, that the appellant:

> c) menjelaskan tuntutan gantirugi yang berjumlah RM 154,113.72 (Ringgit Malaysia Satu Ratus Lima Puluh Empat Ribu Satu Ratus Tiga Belas dan Tujuh Puluh Dua) sekaligus;
>
> d) menjelaskan tunggakan hutang pendahuluan kepada staf berjumlah RM883.58 dan hutang lain dengan Universiti, (jika ada);

[7] The letter dated 28 July 2005 is as follows:

> Tuan
>
> PELETAKAN JAWATAN DAN PELEPASAN DENGAN IZIN
>
> Dengan hormatnya merujuk surat tuan bertarikh 04 Jun 2005 mengenai perkara di atas.
>
> 2. Dimaklumkan bahawa, Universiti bersetuju meluluskan permohonan peletakan jawatan tuan dan pelepasan dengan izin sebagai Pensyarah (Gred DS45) di Fakulti Pengurusan Awam dan Undang-undang, Universiti Utara Malaysia untuk menjawat jawatan sebagai Pensyarah Kanan (Gred DS51) di Universiti Putra Malaysia mulai 01 Ogos 2005.
>
> 3. Pihak Universiti mengucapkan Selamat Maju Jaya dengan tugas yang bakal diceburi.
>
> Sekian, terima kasih.

[8] From the above, it was clear that the letter dated 28 July 2005 did not contain any conditions. A

[9] In considering the significance of the letter dated 28 July 2005, we noted that both letters were addressed to the appellant and signed by the same officer, Mohamad Fadzil Hj Samiran, Bahagian Pengurusan Sumber Manusia bp Pendaftar. There was no question of administrative confusion of two officers sending out letters for one approval. B

[10] Re-examining the letter of 26 July 2005, we noted that para 2 stated as follows: C

> 2. Adalah dimaklumkan bahawa Yang Berbahagia Dato' Naib Canselor telah bersetuju meluluskan permohonan peletakan jawatan tuan dan pelepasan dengan izin sebagai Pensyarah di Fakulti Pengurusan Awam dan Undang-undang mulai 01 Ogos 2005 secara bersyarat iaitu tuan dikehendaki menjelaskan tuntutan gantirugi di atas pelanggaran perjanjian cuti belajar dengan Universiti serta tunggakan hutang daripada pendahuluan kepada staf. D

[11] It was evident that while the letter of 26 July 2005 conveyed the consent or approval of the vice-chancellor, with conditions, the letter of 28 July 2005, as reproduced at para 7 above conveyed the decision of the university, without conditions. E

[12] We noted that the appellant's obligations under the first and the second agreements were to the university. The letter of 28 July 2005, conveying the decision of the university, therefore overrode the vice-chancellor's consent or approval conveyed in the letter of 26 July 2005. F

[13] We observed that the letter of 26 July 2005 imposed the condition that the payment be made in one lump sum ('sekaligus'). If unable to comply, the appellant had the option of not accepting the appointment at Universiti Putra Malaysia. The letter of 28 July 2005 imposed no such impediment and allowed the appellant to proceed to accept his appointment. In the event, estoppel would apply to estop the respondent from relying on the letter of 26 July 2005 and the first and the second agreements. G H

[14] We, therefore, allowed the appeal with costs in the sum of RM10,000, set aside the order of the High Court and ordered that the deposit be refunded. I

Appeal allowed with costs.

Reported by Afiq Mohamad Noor